

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6034 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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B R GANDHI

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner No. 1

MR KM PARIKH, AGP for Respondents No. 1 and 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 27/07/2001

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing and setting aside the the order dated 22-12-1988 of compulsory retirement passed by the respondent no. 1 at Annexure-C to the petition and the order relieving the petitioner from service at Annexure-D.

2. The petitioner was initially appointed as Junior Industry Inspector in the year 1959 and subsequently he was promoted to the post of Sr. Industry Inspector in the year 1966. Thereafter, he was promoted to the post of Industries Officer in the year 1977. It is stated that one superior Officer had passed adverse remarks against the petitioner for the years 1981-82, 1982-83 and 1983-84 out of vindictiveness against the petitioner. During the year 1982, a criminal case was lodged against the petitioner under the provisions of the Prevention of Corruption Act. The learned Sessions Judge, Kheda at Nadiad vide his judgment dated 12-7-1987 acquitted the petitioner from the charges of corruption levelled against him. The departmental proceedings were initiated against the petitioner and the charges were vague and general in nature and based upon the police complaint lodged at the instance of interested person. The show cause notice was issued as to why punishment under Rule 6 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 should not be imposed upon the petitioner. The petitioner replied to the charge sheet by his representation dated 31-12-1987. In the departmental inquiry nothing had happened and he did not receive any notice for personal hearing in that inquiry. The petitioner received order dated 22-12-1988 passed by the respondent no. 1 compulsorily retiring him from service with immediate effect and the petitioner was relieved from service vide order dated 3-2-1989 passed by the respondent no. 2. The petitioner preferred an appeal before the Chief Secretary, Gujarat State, on 18-2-1989 against the impugned order. The petitioner also made an application dated 18-2-1989 for earlier decision in the appeal and hence this petition.

3. It is also stated in the petition that adverse remarks were communicated to the petitioner and the petitioner made representation in reply thereof which was pending and hence those remarks cannot be taken into consideration to pass the order of compulsory retirement. He relied on the decision of the Supreme Court reported in 1984 (3) SLR 325, wherein it has been held as under :

"The principles regarding adverse remarks that they should be communicated within reasonable time and that the representation made by the officer must be disposed of before the same can be considered for the purpose of promotion are equally applicable where the officer is considered for compulsory retirement. The adverse remarks, if they are not communicated within

reasonable time or that the representation thereof is not disposed of by the State Government cannot form the basis of compulsory retirement. The compulsory retirement of the petitioner, therefore, was bad on the ground that the confidential report was not reviewed before communication and that the communication was late and the representation of the petitioner was not disposed of before action was taken."

4. Similar view has been taken in another case reported in 1981 (2) SLR, wherein it was observed that the adverse entries should be communicated and the opportunity of making representation against the adverse entries should be given to the Government servant and the representation should be considered and it should be decided as to whether the adverse entry is to be maintained, altered, modified, changed or deleted. It is only after deciding the representation that the material can be made use of against the Government servants." The petitioner made representations against the adverse remarks but they have not been disposed of. Hence, the impugned order of compulsory retirement is not sustainable in the eye of law. The authorities concerned have imposed compulsory retirement as indicated in the charge-sheet without holding any inquiry and is in violative of Article 311 of the Constitution of India and the competent authority has adopted a shortcut to penalise the petitioner by resorting to the compulsory retirement. Thus, the impugned order of compulsory retirement is punitive. It is stated that after issuing the charge sheet without holding any inquiry straightway the authority of the respondent has passed the impugned order of compulsory retirement during pendency of the departmental inquiry. Adverse remarks in the Confidential Reports during year 1981-82, 1982-83 and 1983-84 were made against the petitioner due to vindictiveness of one officer who wanted to spoil the petitioner's career by making adverse remarks in the confidential report in order to redress his personal prejudice against the petitioner.

5. An affidavit-in-reply has been filed by the Under Secretary, Government of Gujarat, Industries and Mines Department and it is stated therein that the petitioner has been retired from service prematurely by virtue of exercise of powers conferred to the Government under Rule 161 of the B.C.S. Rules, 1971 and the Government is empowered to do so in deserving cases in the public interest. It was considered expedient to prematurely retire the petitioner because the compliments were received against the petitioner regarding harassment and

corruption and that apart his integrity was doubtful. After preliminary inquiry, it was found that the aforesaid complaints were not without substance and therefore the matter was entrusted to Anti-Corruption Bureau and Anti-Corruption Bureau also found substance in the charges levelled against the petitioner. The impugned order has not been passed out of vindictiveness of mind and that is strict compliance of the relevant provisions of law. That order is not arbitrary or unjust. It was also clarified that the impugned order is not the outcome of the departmental inquiry held against the petitioner under Rule 161 of the Bombay Civil Service (Discipline and Appeal) Rules, 1971. The State Government has power to review the case of the Government servant for retaining in services after 50 and 55 years of age. As per the Circulars dated 25-10-1963, 15-5-1970 and under GR dated 30-4-1986 a Committee was constituted to consider the cases of Clause-I officers and Class - II officers under the administrative control of Industries, Mines and Energy Department. The Review Committee was held on 7-2-1987 to review the cases of various persons including the petitioner and recommended to retire the petitioner at the age of 55 years. Recommendations of the Review Committee were submitted to the Government after obtaining approval of the Government at the high level. As such, the orders regarding premature retirement of the petitioner has been issued under GR dated 22-12-1988 is legal and is passed in accordance with law. It is also stated that the service of the petitioner as an Industry Officer was not satisfactory and adverse remarks were communicated to the petitioner in respect of years 1981-82, 1982-83 and 1983-84. The complaints against the petitioner were received in the year 1982-83 regarding harassment and corruption and his integrity was doubtful. After inquiry it was found that there is substance in the complaints regarding corruption and the inquiry was entrusted to the Anti Corruption Bureau. On the basis of the findings of the Ante Corruption Bureau and recommendations by the Independent Authority, the State Government has a measure of punishment imposed cut of Rs.15/- p.m. to the pension amount to the petitioner. The Review Committee has reviewed the case of the petitioner without taking into considerations the departmental inquiry held against the petitioner and the charge sheet issued against him. The petitioner has not been compulsorily retired pursuant to the departmental inquiry but he has been retired prematurely by the Government under the provisions of Rule 161 of the aforesaid B.C.S. Rules, 1971.

6. Rejoinder affidavit has also been filed wherein

it is stated that as the the Resolution dated 28-7-1987 no Government servant should be retired prematurely on the ground of ineffectiveness if he is due to superannuate within a period of one year from the date of superannuation of his case and the petitioner was to retire on 31-12-1989 and the petitioner was made to retire on 3-2-1989 which is less than one year. The petitioner has also made representations against the punishment imposing deduction of Rs.15/- per month from the pension amount but the department has not sent any reply to his representation.

7. The Review Committee has decided that the petitioner should not continue in service on three grounds; (i) adverse entry in his confidential report, (ii) doubtful integrity and (iii) pendency of departmental proceedings. It is submitted by the learned counsel for the respondent that the integrity of the petitioner was doubtful. But there is no adverse remarks regarding doubtful integrity. Hence, in absence of any adverse remarks with regard to doubtful integrity of the petitioner no adverse inference could have been drawn by the Review Committee. Learned counsel for the petitioner relied on the decision of the Supreme Court in the case of State of Gujarat and Another Vs. Suryakant Chunilal Shah reported in 1999 (1) Supreme Court Cases 529, wherein public interest has been considered. The object of premature retirement of a Government servant was to weed out the inefficient, corrupt, dishonest employees from the government service. The public interest in relation to public administration means that only honest and efficient persons are to be retained in service while the services of the dishonest or the corrupt or who are almost dead wood, are to be dispensed with, as observed by the Supreme Court in the decision reported in the case of Union of India Vs. J.N. Sinha and Another i.e. AIR 1971 SC 40, which reads as under :

"Compulsory retirement involves no civil consequence. Aforesaid Rule 56 (j) is not intended for taking any action against the Government servants. That rule merely embodies one of the facets of the 'pleasure doctrine' embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the Rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is

holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in Government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56 (j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

8. In the aforesaid decision of the Supreme Court, the Supreme Court found that there was no material before the Review Committee inasmuch as there were no adverse remarks in the character entries, the integrity was not doubtful at any time, the character roll entries subsequent to the respondent's promotion to the post of Assistant Food Controller (Class II) were not available, it could not come to the conclusion that the respondent was a man of doubtful integrity nor could have anyone else come to the conclusion that the respondent was a fit person to be retired compulsorily from service. In the present case, learned Assistant Government Pleader showed the original consideration by the Review Committee regarding the petitioner. The Review Committee was held on 7-2-1987. It was observed that in the year 1984 the criminal complaints were received against the petitioner and during investigation thereof some substance was found and the inquiry in that respect was entrusted to the Ante Corruption Bureau.

9. From the consideration made by the Review Committee it does not appear that any entry was made against the petitioner in the confidential report that the integrity of the petitioner was doubtful. In the Confidential Reports related to the year 1982-83 it has been observed that his work was not found satisfactory. On the basis of the material placed on record by the learned A.G.P. I find that there is no adverse remarks in the confidential report of the petitioner that his integrity was doubtful. Thus, I find substance in the contention of the learned counsel for the petitioner that in absence of adverse remarks as well as the Review

Committee again recorded the finding that the petitioner's integrity was found doubtful.

10. So far as, the contention of the learned counsel for the petitioner regarding the cases pending before the concerned department of the Government against the petitioner is concerned, the Review Committee has relied upon the cases which were pending in the Government (department concerned) and it was found that there was prima facie case against the petitioner. The contention of the learned counsel for the petitioner is that in the departmental proceeding in which charge was issued on 7-10-1987 and the petitioner replied on 31-12-1987 and thereafter the Government has done nothing and passed the order of compulsory retirement on 22-10-1988. Without disposing of the representations made by the petitioner the Review Committee could not have taken decision for not retaining the petitioner in service.

11. Learned counsel for the petitioner relied on the decision of this Court in the case of Narendrakumar V. Parikh Vs. State of Gujarat reported in 1999 (1) G.L.H. 816, wherein the question as to what would be the effect of the pendency of the Departmental inquiry was considered and held as under :

"It is therefore, clear that the inquiry proceedings were short circuited and the charges, which were subject matter of the inquiry, were made use of by the Committee, which considered the petitioner's case for compulsory retirement and it cannot be said that these charges did not weigh with the Committee in arriving at the recommendations for his compulsory retirement.

True it is that in normal course an order of compulsory retirement is neither punitive nor it cannot be said that it entails any penal consequences as such because the order of compulsory retirement on the ground of public interest does not deprive an employee any of his earned benefit, but the law is equally settled that in the facts of a given case if it is made to appear before the Court that the order of compulsory retirement is only a cover and in fact the order is founded on misconduct and that it has been passed only by short circuiting the procedure of inquiry or it is otherwise made to appear before the Court on the basis of the circumstances attendant and preceding to the passing of the order of compulsory retirement

that in fact the allegations of misconduct formed the heart and soul of the compulsory retirement, the form of the order is not conclusive and the Court has to go to substance rather than the form and the Court has a right to unveil, remove the cover to examine the real nature of the order."

12. In the present case, from the Review Committee Report, it appears that the Review Committee has based its recommendation on the cases which were pending in the Government (concerned department) and the Review Committee found that there was a prima facie case. As such, the contention of the learned counsel for the petitioner in this respect is tenable.

13. The Review Committee relied on the cases pending against the petitioner before the Government (department concerned) and in that respect charge sheet was issued on 7-10-1987 and the petitioner replied to that charge sheet on 31-12-1987. But nothing was found and the order of compulsory was passed on 22-12-1988. As such, it cannot be said that the Review Committee was not influenced by the pendency of the cases against the petitioner before the Government and the order of compulsory was passed.

14. So far as the contention of the learned counsel for the petitioner regarding adverse entries made against the petitioner is concerned, from the Review Committee Report, it appears that in the CR relating to the period of 1982-83 there are following remarks :

i. No capable of taking work from the subordinate staff. Accuracy has not been kept in preparing statement. His work was not found satisfactory."

ii. In the year 1981-82 it was found that there are also several adverse remarks; not capable of taking work from the subordinate staff, his work is not satisfactory and entry was communicated to the petitioner in the month of September, 1982.

15. The Supreme Court in the case of Madan Mohan Choudhary Vs. State of Bihar and others, reported in 1999 (3) SCC 396, the Supreme Court has considered the decision of three Judges' Bench in the case of Baikuntha Nath Das reported in AIR 1992 SC 1020, wherein the

principle has been laid down in respect of compulsory retirement on the basis of the adverse remarks, which is as follows :

- "(i) As order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.
- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as in appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
- (iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.
- (v) An order of compulsory retirement is not liable to be quashed by Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

16. In the guidelines stated above, it is stated that the order of compulsory retirement is liable to be

quashed and aside by a Court merely showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstances by itself cannot be a basis for interference.

17. In the present case, the adverse remarks relating to the year 1981-82 and 1982-83 were communicated to the petitioner and the petitioner has not filed any reply regarding the remarks passed in respect of the year 1982-83. This Court cannot examine sufficiency of the material based upon by the Review Committee for retention of the employee in service of the Government. Even the contention of the learned counsel of the petitioner regarding doubtful integrity of the petitioner and pendency of the case against the petitioner before the Government are excluded, the adverse entries remained against the petitioner in respect of the year 1982-83 and 1981-82. On the basis of it, it cannot be that there is no material on the basis of which, Review Committee has made recommendation for compulsory retirement. As such, there is a material relied upon by the Review Committee can be sufficient for passing the impugned order of compulsory retirement. Thus, I do not find any substance in this petition calling for interference by this Court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India. Therefore, this petition is liable to be dismissed.

18. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs.

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